

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 8TH DECEMBER 2006 / 17TH AGRAHAYANA 1928

Crl.MC.No. 3998 of 2006()

LPC.38/1995 of JUDL.MAGISTRATE OF FIRST CLASS-I, HOSDRUG
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PETITIONER: 3RD ACCUSED

AMEER, S/O.ABOOBACKER,
PZHAYAPATTILLATH, PEROLE,
NILESHWAR VILLAGE.

BY ADV. SRI.V.N.ACHUTHA KURUP (SR.)
SRI.B.S.SWATHY KUMAR
SRI.BINDU SREEKUMAR

RESPONDENTS: COMPLAINANT

STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 08/12/2006, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J.

Crl.M.C.NO.3998 OF 2006

Dated this the 8th day of December, 2006.

ORDER

The petitioner is accused No.3 in a prosecution under Sections 324 and 341 read with 34 I.P.C. The trial against the co-accused is already over and they were found not guilty and acquitted. The petitioner was not available for trial and in these circumstances the proceedings against him is pending. A non bailable warrant of arrest has been issued against the petitioner and it is in these circumstances that he has come to this Court with this Crl.M.C.

2. He makes two alternative prayers. Firstly it is prayed that the co-accused having been acquitted, the prosecution against him may also be quashed. Alternatively it is contended that the learned Magistrate may be directed to consider the petitioner's application for bail on the date of surrender itself. He apprehends that his case having been transferred to the list of Long Pending Cases, the learned Magistrate may not consider his application for bail on merits and expeditiously. Powers under Section 482 Cr.P.C may be invoked to direct the learned Magistrate to consider the petitioner's application for bail when

he surrenders before the learned Magistrate, prays the learned counsel for the petitioner.

3. The acquittal of the co-accused is by itself no valid reason to quash the proceedings against an absconding co-accused. This has been reiterated in the Full Bench decision in **Moosa v. Sub Inspector of Police** [2006(1) KLT 552]. If the petitioner has any valid reasons to claim discharge, he can certainly advance such contention before the learned Magistrate at the stage of Section 239/240 Cr.P.C. It is pointed out that there is an earlier discharge of the accused in a private complaint for the same offences. Absolutely nothing has been placed before me to indicate that there has been such a discharge. Needless to say that if there is already any valid reasons to warrant discontinuation of proceedings on such alleged discharge, the petitioner can claim discharge before the learned Magistrate.

4. It is certainly for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the application for bail

on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific directions appear to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police** [2003(1) KLT 339].

5. In the result, this CrI.M.C is dismissed. But with the specific observation that if the petitioner surrenders before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself, unless there are compelling reasons .

**R.BASANT
JUDGE**

rtr/